

NO. 48744-6

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

STEVE BERSCHAUER,

Appellant,

v.

STATE OF WASHINGTON, CITY OF OLYMPIA, et. al.,

Respondents.

**BRIEF OF RESPONDENT, STATE OF WASHINGTON,
DEPARTMENT OF ENTERPRISE SERVICES**

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RESPONDENT, State of Washington, Department of Enterprise Services, by and through its attorneys, Robert W. Ferguson, Attorney General, and Brian Faller, Assistant Attorney General, submits the following response to the Brief of Appellant.

I. JOINDER IN THE CITY'S BRIEF

The State of Washington hereby joins in the Brief of Respondent, City of Olympia, and therefore adopts its Introduction, Issues, Statement of Case, and Argument.

In the interests of efficiency and to minimize redundant or unnecessary briefing before the Court, the State has closely coordinated with the City, which has, as appropriate, included the State's substantive input in the City's brief.

II. CONCLUSION

The State requests that the Court affirm the judgment of the superior court for the reasons stated in the City's brief. Affirming the dismissal of Mr. Berschauer's belated challenge to the boundary line adjustment is just and reasonable. It is legally required for the reasons stated in the City's brief and will in no way affect Mr. Berschauer's claim of title to a portion of the vacated right-of-way, which is before the Court in the separate case, Cause No. 49414-1-II. The latter case involves a quiet

title action and tort and damage claims (trespass, slander of title, inverse condemnation) that Mr. Berschauer has brought against the State.

If the State is a prevailing party in this appeal, the State requests that the Court award it attorneys fees and costs as provided under RCW 4.84.370. The State as prevailing party would qualify for attorneys fees and costs under subsection 1 of this statute, as the State was the prevailing party before the City on its boundary line adjustment application and in all prior judicial proceedings on this matter.

RESPECTFULLY SUBMITTED this 7th day of October, 2016.

ROBERT W. FERGUSON
Attorney General

s/ Brian Faller
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WASHINGTON STATE ATTORNEY GENERAL

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STEVE BERSCHAUER,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ENTERPRISE
SERVICES; PUGET SOUND ENERGY,
INC., a Washington State Public Utilities
Corporation; FYI PROPERTIES, a
Washington nonprofit corporation; THE
BANK OF NEW YORK MELLON TRUST
COMPANY, NATIONAL ASSOCIATION,
as Trustee Under Indenture of Trust Dated as
of August 1, 2009 and THE CITY OF
OLYMPIA,

Respondents.

CERTIFICATE OF
SERVICE

I, Angela M. Boggs, an employee of the Transportation and Public
Construction Division of the Office of the Attorney General of
Washington, certify that on this day true copies of the Brief of
Respondent, State of Washington, Department of Enterprise Services and
this Certificate of Service were served on the following parties as
indicated below:

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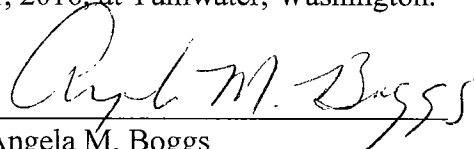
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Mark Barber City Attorney mbarber@ci.olympia.wa.us acoleman@ci.olympia.wa.us	By: <input type="checkbox"/> United States Mail <input type="checkbox"/> Legal Messenger <input checked="" type="checkbox"/> Electronic Mail
W. Dale Kamerrer Association of Counsel to City of Olympia dkamerrer@lldkb.com marry@lldkb.com	By: <input type="checkbox"/> United States Mail <input type="checkbox"/> Legal Messenger <input checked="" type="checkbox"/> Electronic Mail

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 7th day of October, 2016, at Tumwater, Washington.


Angela M. Boggs
Legal Assistant

WASHINGTON STATE ATTORNEY GENERAL

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